

NATURAL RESOURCES COMMISSION

Meeting Minutes November 14, 2007

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at the Town House, Hearing Room, 22 Monument Square, Concord, MA at 7:00 p.m. on Wednesday, November 14, 2007. The following Commissioners were present: Alexander Easterday, Montgomery Lovejoy, Jamie Bemis, Steve Verrill and George Lewis. Delia Kaye, Natural Resources Administrator; and Cynthia L. Gray, Natural Resources Administrative Assistant were also present.

CONTINUANCES:

TOWN OF CONCORD – Railroad Right-of-Way (Bruce Freeman Rail Trail) / ANRAD – Request for confirmation of wetland resource areas, DEP File #137-948

Matthew Varrell, PWS, of Vanasse Hangen Brustlin, Inc. (VHB) appeared on behalf of the Applicant. Matt Varrell provided the Commission with verbal responses to the comments received on the ANRAD application to date. Matt Varrell summarized the responses on the comments received from Gary Sanford dated September 12, 2007 and Patrick Garner dated September 18, 2007, first.

For Wetland 1, Matt stated that VHB extended the delineation to ensure that the buffer zone was accurately reflected on the ROW.

Wetland 2 was flagged using a typically accepted method of delineating Isolated Land Subject to Flooding (ILSF). One flag, WF #1-104, was reset at WF #1-104A. As requested by Patrick Garner, VHB conducted engineering calculations to confirm the ILSF and vernal pool boundary. Though correct numbers were used to run the calculations, incorrect numbers were supplied in VHB report. The correct numbers were provided to Concord Public Works for verification. The flagged boundary of Wetland 2 remains upgradient of the ILSF and vernal pool calculations, reflecting a more conservative delineation.

Calculations for Wetland 3 were conducted using a design storm of 2.7 inches of precipitation in 24 hours, in accordance with the NHESP guidance for establishing vernal pool boundaries. VHB believes that the flagged boundary represents an accurate delineation of the vernal pool boundary.

At Wetland 4, one additional flag, WF #4-101A was added.

Wetland 6 was originally flagged as ILSF but the calculations requested by Gary Sanford and Patrick Garner determined that this is not a state-regulated resource area. The revised plans reflect that this wetland is potentially federally regulated only.

Wetland 7 shows as perennial on USGS mapping, but four photographs taken between May and August document it as an intermittent stream. VHB is in the process of obtaining data

from the Concord Water and Sewer Division Department to clarify if water withdrawals affect streamflow. Delia Kaye stated that she received an email from the Superintendent of the Water and Sewer Division noting that the public water supply well is approximately 3,000 feet upgradient of the stream, is low flow (approximately 375 gallons per minute), and is relatively shallow (approximately 60 feet deep), that indicates that any groundwater withdrawal is negligible.

Wetland 8 required no changes.

Wetland 9 was originally flagged as ILSF. Although not noted by Patrick Garner or Gary Sanford, VHB reflagged this as BVW because further review indicated it that it is not an isolated system. This is shown on the revised plans.

Warner's Pond was not originally delineated because it was outside the ROW, but the pond edge was delineated as Wetland 13, and plans have been revised to show the small amount of buffer zone associated with Warner's Pond on the ROW.

At Wetlands 10 and 11, the Mean Annual High Water (MAHW) line is within the originally delineated limits of Bank.

Matt Varrell then responded to comments in Patrick Garner's letter dated November 4, 2007.

The Wetlands Protection Act Regulations require that a professional engineer conduct the engineering calculations to determine ILSF. Darryl Gallant, P.E., of VHB performed the calculations.

Bullet 1 (Wetland 2 – Isolated Land Subject to Flooding Boundary): Though appropriate numbers were used to run the calculations, incorrect numbers were supplied in the VHB report. The correct numbers were provided to Concord Public Works for verification. The flagged boundary of Wetland 2 remains upgradient of the ILSF calculations reflecting a more conservative ILSF and vernal pool boundary. CPW reran the calculations with CN numbers included for the railroad and standing water, resulting in a one-foot elevation change (calculations provided to Matt Varrell and Pat Garner at this meeting).

Bullet 2 (Wetland 6) – Same as for Wetland 2

Bullet 3 (Vernal Pool Boundary Calculations) – A 2.7- inch, 24-hour, design storm was used for the calculations.

Bullets 4 and 5 (Stream Stats) – VHB provided photographs in the NOI to confirm that the stream is intermittent. StreamStats were provided at the request of the Natural Resources Administrator to back up information on watershed size and streamflow.

Bullet 6 (Wetland 3A) – Between Wetlands 2 and Wetland 3 is a channel that flows under Powder Mill Road. North of Powder Mill Road, the stream channel loses a defined Bank and therefore is not a regulated resource area where there is a lack of defined Bank. The

intermittent stream was flagged as Wetland 3A north of Powder Mill Road to where the Bank disappears. If this is acceptable to the Commission, it will be shown on the plan. In response to Mr. Garner's assertion that if the channel were cleaned or a large storm event came through to create a Bank, Matt Varrell stated that they document the resource areas based on the regulations and existing, not future, theoretical, conditions.

Bullet 7 (Mean Annual High Water) – MAHW was initially flagged as the limit of Bank. In order to confirm that this was the MAHW elevation, VHB survey located the highest elevation at which water staining on the bridge abutments was observed. This elevation is within the flagged Bank limits.

Gregor McGregor, 70 Williams Road and attorney of McGregor and Associates, reintroduced Patrick Garner. Patrick Garner expressed concern with the calculations, river issues and the requirements for the withdrawal affecting the well.

Delia Kaye stated that DEP provides very little guidance on assessing water withdrawal effects, and that the Town doesn't have unlimited resources to conduct the expensive studies necessary for a hydrologic analysis to understand the potential effects of well withdrawals. Patrick Garner maintained that the intermittent stream (Wetland 3A) was jurisdictional, because if the channel was cleaned out or a major storm event occurred, a Bank would reemerge.

Gregor McGregor stated that the Commission should think about what they wanted these resources to be when the project gets to the construction stage. Alexander Easterday noted that VHB is defining and showing the resource areas on the ANRAD. Jamie Bemis asked about the four days of no flow of the stream and asked when the last day of observation was. Matt Varrell stated August 14, 2007.

Ruth Gerow, 369 Commonwealth Avenue, asked about the Route 2 rotary and the design process. Alexander Easterday noted that Mass Highway is dialoguing with CPW and that a contractor had been retained. Delia Kaye noted that she believed that 2014 was the estimated year of construction and that efforts were being made to coordinate the Rotary and rail trail designs so that efforts were not duplicated. Delia Kaye suggested that Ruth Gerow contact Jim Shuris, Town Engineer.

Julie Melbin, 210 Stone Root Lane, referenced Wetland 3A and asked how the water travels under the roadway. Julie Melbin noted that the ANRAD defines areas in which development can occur and that the Commission should take a conservative approach. She expressed concern that the only way to right a wrong is through DEP appeal. Jane Coutre, 114 Stone Root Lane and Old Pickard Trust, representing 27 families, noted that since the Commission did not support Warrant Articles 9 and 10, that the Commission should be conservative to protecting the wetlands. Dan Latham, 22 Southfield Circle, noted that the resource areas around the rail trail should be protected for wildlife. Ed Houlihan, 220 Stone Root Lane, noted the large number of animals that cross the rail ROW. Bill Gluck, 319 Old Pickard Road, noted that the Commission has taken on extra obligations with this project.

This hearing was continued to November 28, 2007, at which time the Commission expects to discuss the material presented.

ESTABROOK ROAD NOMINEE TRUST – 55 Estabrook Road & 33 Liberty Street /
NOI – Removing an existing stone wall, construction and maintenance of stonewalls, invasive species removal, wetland restoration and replacement mitigation, construction and maintenance of a timber footbridge over an intermittent stream and landscape plantings within the 100-foot Buffer Zone to Bordering Vegetated Wetlands and Bank, and Estimated Habitat of Rare Wildlife, **DEP File #137-951**

Jeff Johnson of Holmes and Mcgrath, Inc. and Attorney Gregor McGregor of McGregor & Associates appeared on behalf of the applicant.

Jeff Johnson discussed the changes on the revised plan. The confirmed wetland line under an existing Order of Conditions was labeled on the plan. Expanded work into the wetland area is proposed to ensure that a berm at the existing wetland boundary does not create a hydrologic barrier to the proposed replication area.

Jeff Johnson provided a revised page 3 of the Notice of Intent application. He will submit a revised table of impact calculations. With regard to the construction access road, much of the work would transpire during the winter months to reduce impact. A trak mat will be used for the spade truck to limit damage to the pathway. Jeff Johnson supplied copies of photos of the spade truck to show its size and how it would fit on the pathway. The weight of the 10-wheeled spade truck is estimated at 25 tons (estimated with a tree loaded on top). Filter mitts will be used in place of hay bales. Dye will be used in the herbicides. The plan does not reflect the size and species of the trees to be removed. Jeff Johnson will supply a revised plan with this information.

Alexander Easterday noted that the invasive species control would be conducted across the entire site, but this was not reflected on the plan. Delia Kaye requested that Jeff Johnson add a note to the plan that stated that invasive species control would be site-wide. Alexander Easterday requested that the plan reflect the NHESP-approved mowing dates. Jamie Bemis noted her concern with the weight of the truck relative to proposed screen plantings. Alexander Easterday asked if the applicant could plant the trees in the winter to lessen the impact to the affected areas. Ted Dierker of Oslund and Associates, Minneapolis, MN noted that the flat-bed truck would still be needed on the site because 20-foot trees were being moved, but that dormant plantings were preferred. Tim Santos of Holmes and Mcgrath, Inc. noted that the trak mat had been used in a project on Cape Cod where the truck crossed a sprinkler system with no damage to the system. Jamie Bemis asked about the stone wall. Jeff Johnson indicated that the applicant was working with the Historic District Commission to determine jurisdiction. Ted Dierker noted there would be visual bounds all around the premises. Alexander Easterday indicated that a construction timeframe for work in jurisdictional areas would be included as a Special Condition in the permit

This hearing was continued to November 28, 2007 at which time the Commission expects to close the hearing and issue a permit. A draft Order of Conditions will be prepared and provided to Attorney McGregor for review.

BENTLEY BUILDING CORP. (White) – 14A Strawberry Hill Road / NOI – Five lots for constructing four single-family dwellings and one lot for associated site work only, together with associated utilities, grading and the installation of an emergency drainage system overflow pipe, all within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-940

Rich Harrington of Stamski and McNary appeared together with applicant, Mark White.

A revised plan has been submitted to DNR staff previous to this evening's hearing. All of the trees and their size have been shown on the plan. Drainage calculations have been revised and reviewed by the Concord Engineering Department. Bill Renault, Town Engineer, has forwarded correspondence to Tyke Crowley, Staff Planner. Alexander Easterday inquired about granite posts being shown on the revised plan. Rich Harrington confirmed they were shown and referenced sheets 2 and 3 of the revised plan. Alexander Easterday noted the degree of the slope/ridge and asked if intermediate boundaries could be placed between the posts in order to delineate where the private property ends and to show the ridge in order to keep people away from the boundary as it would be a curiosity factor. Mark White indicated that the natural path was 10-15 feet lower.

Delia Kaye asked if the Applicant would consider reducing the driveway widths and lengths to the proposed homes to reduce the amount of impervious surface. Delia Kaye also noted that the revised plans should show connection of the eastern end of the trail to a logical terminus such as the roadway or sidewalk. Mark White indicated that he would make the width of some of the driveways narrower. Rich Harrington noted the gravel path to be five feet in width as it was reviewed by Town Counsel. Delia Kaye asked who would hold the easement and who would hold the land. Delia Kaye asked if the conservation restriction be wrapped up by year-end. Mark White indicated that he would seek direction from the Town. Delia Kaye noted that a Special Condition would be included requiring the conservation restriction be completed as part of this project. Rich Harrington noted that they would be meeting with the Zoning Board of Appeals in December and was looking for recommendations from the NRC to the ZBA. Alexander Easterday noted NRC would recommend to the ZBA that they include the conservation restriction as part of their permit.

This hearing was continued to the November 28, 2007 meeting, at which time the Commission expects to close the hearing and issue a permit, pending receipt of revised plans with the above-noted changes.

NEW APPLICATIONS:

TRITSCH – 233 Heath's Bridge Road / NOI – Constructing a two-car detached garage within the 200-foot Riverfront Area of the Sudbury River and Estimated Habitat of Rare Wildlife, DEP File #137-955

Applicants and property owners, Geoff Tritsch and Electa Tritsch appeared together with the contractor, Rob Reagan.

Electa Tritsch indicated that no green cards were on hand as she and her husband spoke to each abutter personally and had each abutter sign the certified abutter's list to acknowledge notification.

Electa Tritsch noted a steep slope between the house and the Sudbury River. At the edge of an existing cleared disturbed space would be the location of the proposed garage as the applicants did not want to disturb the landscaping and existing woodland on the portion of the property outside of the Riverfront Area. Alexander Easterday asked where the limit of work was. Rob Reagan stated that the building envelope was actually the limit of work, and this was noted on the office copy. He also noted that heavy equipment would access the premises on existing blacktop. It is anticipated to take five weeks from start to completion of the project. Waste materials would be taken offsite daily by Rob Reagan with the use of a trailer.

This hearing was continued to November 28, 2007 at which time the Commission expects to close the hearing and issue a permit.

ROOS – 36 Wood Street / NOI – Removing and replacing an existing porch and deck; constructing an addition to an existing single-family dwelling; and tree removal within the 100-foot Buffer Zone to Bordering Vegetated Wetland and Estimated Habitat of Rare Wildlife, DEP File #137-956

Jonathan Bollen of Stamski and McNary, Inc. appeared on behalf of the applicant. George Lewis stated in the interest of full disclosure that he knows the Roos family but didn't believe this would affect his judgment or present a conflict of interest. Staining on the Main Street bridge abutment was used as the Mean Annual High Water (MAHW) Line. A survey plan was submitted but the MAHW line was not flagged in the field. Delia Kaye noted her concern that the MAHW Line was not flagged on the site in order for staff to confirm. Delia Kaye requested that a site visit be scheduled with the applicant to confirm the MAHW Line. The site visit would need to be held by the following Tuesday, November 20th due to the Thanksgiving holiday.

This hearing was continued to November 28, 2007 at which time the Commission expects to close the hearing and issue a permit.

REQUEST FOR EXTENSION PERMITS:

NORMANDY CONCORD ACQUISITION LLC – 300 Baker Avenue, DEP File #137-625

Attorney Daniel Holmes of Lerner & Holmes, P.C. appeared on behalf of the applicant. The applicant is seeking a three-year extension. Attorney Daniel Holmes indicated there had been a delay in construction due to the 9/11 attacks and economic events. Attorney Holmes also noted that the market is starting to recover as vacancies have dropped. Alexander

Easterday asked about possible plan changes with a possible change in ownership. Jamie Bemis noted a lot of uncertainty with the project and requested that the applicant seek a shorter extension period. Delia Kaye noted that if there were any changes in the regulations, those changes would not be reflected in the three-year permit. Attorney Daniel Holmes noted the Commission's high degree of scrutiny and the importance of this project. The Commission, staff and CPW have all carefully been reviewing this project.

Steve Verrill moved to issue a three-year extension permit. George Lewis seconded. Montgomery Lovejoy voted in favor. Jamie Bemis and Alexander Easterday were opposed. A three-year extension permit was granted.

GOWER (SELIAN) – 63 Cedar Way, DEP File #137-812

Attorney Steven Graham of Graham & Harsip, P.C. appeared on behalf of the applicant. The new owner purchased the premises in September. The applicant was seeking additional time in order to add an addition to the existing home together with a two-story garage as it was anticipated that the work would commence in the fall of next year. Applicant was requesting a two-year extension.

Montgomery Lovejoy moved to issue the two-year extension permit. Steve Verrill seconded. All so voted.

CONNOR – 349 Walden Street, DEP File #137-859

No one appeared to present the request for an extension. This matter was tabled until the November 28, 2007 meeting.

REQUEST FOR AMENDED ORDER OF CONDITIONS:

OVERALL – 404 Monument Street / AMENDED ORDER OF CONDITIONS, DEP FILE #137-921

Joseph Fenton of Estes/Twombly appeared on behalf of the applicant. Joseph Fenton noted that potential toppling white pine trees posed a safety hazard to this property and also to the abutter's property. A proposed replanting plan had been sent to Division of Natural Resources staff via email for review. Joseph Fenton noted that the applicant proposed tree removal using a crane. Joseph stated the trees were compromised due to the full height and weight of the trees, and because the trees were standing in one column against the retaining wall, which most likely indicates a shallow root system. Toby Kramer, an abutter to the Overall property, stated that her house is approximately 15 feet from the trees and had experienced branches falling in the past which would indicate the trees weakened status along the wall. Delia Kaye requested that a stamped plan be submitted showing all of the prior approved work, as well as the amended work. Joseph Fenton indicated that he would contact John Hamel who prepared the original plan.

This hearing was continued to November 28, 2007 at which time the Commission expects to issue an Amended Order, pending receipt of revised plans.

ISSUE AMENDED ORDER OF CONDITIONS:

CONNOR – 349 Walden Street / **AMENDED ORDER OF CONDITIONS, DEP FILE #137-859**

Montgomery Lovejoy moved to close the hearing. George Lewis seconded. All so voted. George Lewis moved to issue an Amended Order of Conditions. Steve Verrill seconded. All so voted.

ISSUE ORDER OF CONDITIONS (DUPLICATE):

TRITSCH – 233 Heath's Bridge Road, **DEP File #137-823**

Steve Verrill moved to issue a Duplicate Order of Conditions. Jamie Bemis seconded. All so voted.

CERTIFICATES OF COMPLIANCE:

WALLSTROM – 91 Turning Mill Road, **DEP File #137-832**

Montgomery Lovejoy moved to issue a Certificate of Compliance. Steve Verrill seconded. All so voted.

KRIMS – 51 Coolidge Road, **DEP File #137-902**

This approval is contingent upon DNR staff approval of items in Katie Holden's e-mail to Bonnie Krims dated 11/14/07.

Jamie Bemis moved to issue a Certificate of Compliance. George Lewis seconded. All so voted.

OTHER BUSINESS:

635 Monument Street (Robb Pippin Tree Farm) CR – Presented by Nick Pratt, LandVest

Nick Pratt of Landvest appeared with Margaret Wheeler, The Trustees of Reservations, to present this proposal. Gordon Bell, 1657 Monument Street, also appeared, and in the interest of full disclosure stated that his wife was a cousin of Russell Robb's, but that he did not expect this to affect his judgment, nor had he spoke to the Robb's about the CR.

Approximately 42.8 acres of land is subject to a Conservation Restriction (CR), including a 1.5 acre building parcel. Gordon Bell stated that he had spoken with the Conservation Restriction Stewardship Committee (CRSC) and DNR staff about this restriction, and made revisions to the document that were primarily reflected in the final version. Gordon Bell noted the scenic view from Monument Street that painters frequently capture. There is an existing trail on the property that connects to existing trails in Pippin Tree Land Trust, and ultimately Estabrook Woods, and this trail will be open to the public. Gordon Bell noted this parcel is good horse farming land and the large acreage involved would be a tremendous benefit to the Town. Nick Pratt noted that a survey plan would be available shortly. Gordon Bell noted that the Forest Legacy (Exhibit "C") does not match the trail on the plan. Nick Pratt noted that the surveyors had trouble with the northern end of this property, and that this issue should be resolved with the survey plan. Margaret Wheeler noted that the signatures of all Commission members would be required on the Municipal Certification Form and Gordon Bell recommended that the Commission sign the form after reviewing the survey.

Montgomery Lovejoy moved that the NRC make a recommendation to the Board of Selectman to accept the Conservation Restriction as proposed to be held by the Trustees of Reservations conditioned upon final documents being reviewed and approved by DNR staff. Steve Verrill seconded. All so voted.

335 Walden Street

Holly Darzen, Concord Housing trust (CHT) appeared to present a CPC application proposal. CHT seeks to acquire 335 Walden Street for affordable housing and open space. A proposal of 5 or 6 affordable housing units is proposed. CHT representatives met with the Board of Selectman and representatives of CPC yesterday to discuss this proposal.. Holly Darzen indicated that they wished to buy the land with 1/3 of funding obtained from Affordable Housing and the remaining 2/3 of funding anticipated from the CPA Open Space funds. The Commission discussed resource area jurisdiction and CPC Open Space reserve funding. Holly Darzen indicated that the CHT had offered less than the assessed value, but had not heard back as of this meeting. The assessed value is between \$500,000 and \$600,000. Holly Darzen noted that from a financial standpoint, this project would not be financially viable if they not able to build at least five units. The Commission discussed a general letter of support, noting that they had no engineered plans for review, that support for the proposal had been requested with no coordination on the CPA Open Space funding concept, and the lack of time to discuss the proposal thoroughly. Montgomery Lovejoy moved to submit a letter of support. Steve Verrill seconded. All so voted.

Trails Committee

Montgomery Lovejoy moved to approve the charge of the Trails Committee. Steve Verrill seconded. All so voted. Jamie Bemis moved to nominate George Lewis as NRC liaison to this Committee. Montgomery Lovejoy seconded. All so voted.

These items were tabled until November 28, 2007:

Approve October 3, 2007 Meeting Minutes

Approve October 17, 2007 Meeting Minutes

Approve October 29, 2007 Meeting Minutes

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant